

II. LEGAL STANDARD

A case filed under 42 U.S.C. § 1983 requires a deprivation of a right secured by federal law by a person acting under color of state law. Section 1983 applies to violations of federal constitutional rights, as well as certain limited federal statutory rights. See Maine v. Thiboutot, 448 U.S. 1 (1980); see also Gonzaga University v. Doe, 536 U.S. 273, 283 (2002) (holding that a right must be “unambiguously conferred” by a statute to support a Section 1983 claim). Title 28 U.S.C. § 1915A directs the Court to conduct an initial review of civil actions by prisoners seeking relief from a governmental entity or employee and identify cognizable claims or dismiss the complaint, or parts thereof. The Court has conducted an initial review of Plaintiff’s Complaint and has determined that all Defendants except A. Hergenrother and Duane Terrell should be dismissed..

III. DISCUSSION

The claims against Defendants Brookshire, Faircloth, and Corpening are dismissed because Plaintiff has not identified any constitutional or statutory violation on their parts. He merely has alleged that each passed the package in question up the chain of command for review by a superior. His Complaint makes clear, however, that Defendant Terrell made the decision to reject delivery of the package.

The claim against Defendant Lewis likewise is dismissed. Plaintiff does not allege that Defendant Lewis was directly responsible for the receipt or delivery of prison mail or played any part in the decision to reject delivery of the package from Plaintiff’s mother. Instead, Plaintiff merely states that Lewis, as the Director of the Division of Prisons, is legally responsible for the

some of his manuscripts were missing and accuses MCI officials of stealing or destroying them before returning the package to his mother.



overall operation of each institution in the Division, including MCI. However, the doctrine of *respondeat superior* generally does not apply in § 1983 claims. Monell v. Dep't of Soc. Services, 436 U.S. 658, 694 (1978).

Finally, Plaintiff identifies Defendant Terrell as the individual who decided to reject the package at issue. (Doc. No. 1 at 9).³ However, an exhibit to the Complaint states that the decision was made by Defendant Hergenrother. (Doc. No. 1-1 at 10). Therefore, the undersigned finds that both Defendants Terrell and Hergenrother should answer Plaintiff's Complaint.

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. Defendants Brookshire, Faircloth, Corpening, and Lewis are dismissed and should be removed from the caption of this case; and
2. The Clerk of Court shall issue summons for Defendants Terrell and Hergenrother and deliver them forthwith to the U.S. Marshall who will make service of process without additional cost; and
3. Defendants Terrell and Hergenrother shall file an Answer to Plaintiff's Complaint in accordance with the Federal Rules of Civil Procedure.

Signed: July 28, 2011


Robert J. Conrad, Jr.
Chief United States District Judge 

³Unless otherwise indicated, the page numbers in docket citations are those assigned by CM/ECF, the Court's electronic filing system.